

## CHAPTER 23 MOTOR VEHICLE SERVICE CONTRACTS

**191—23.1(321I) Purpose.** The purpose of this chapter is to set forth rules and procedural requirements which the commissioner of insurance deems necessary to carry out the provisions of Iowa Code chapter 321I. The information called for by these rules is hereby declared to be necessary and appropriate in the public interest and for the protection of policyholders in this state.

**191—23.2(321I) Applicability and scope.** This chapter shall apply to all providers of motor vehicle service contracts issued, sold, or offered for sale in this state, such as automobile dealers who offer and sell motor vehicle service contracts and any third-party administrators of such motor vehicle service contracts. This chapter also applies to all motor vehicle service contract reimbursement insurance policies issued by an insurer authorized to do business in this state.

**191—23.3(321I) Title.** “Act” means the Iowa motor vehicle service contracts Act.

**191—23.4(321I) Application of insurance laws.** The sale of a motor vehicle service contract shall not be deemed to include the sale of insurance. Thus, unless the motor vehicle service contract provider is otherwise engaged in the sale of insurance, the provisions of the insurance laws of this state shall not be applicable to that provider. However, this provision may not be construed to exempt any other warranties or service contracts other than motor vehicle service contracts, as defined in the Act, from the provisions of the insurance laws of this state.

**191—23.5(321I) Exemption.** The provisions of the Act and this chapter do not apply to motor vehicle service contracts issued by a motor vehicle manufacturer or importer or to any third-party administrator acting on their behalf.

### **191—23.6(321I) Administration.**

**23.6(1)** The Act shall be administered by the commissioner of insurance of the state of Iowa. As deputy administrator, the Iowa superintendent of securities shall be the principal operations officer responsible to the commissioner for the routine administration of the Act and management of the administrative staff of the Iowa securities bureau.

**23.6(2)** In the absence of the commissioner, whether because of vacancy in the office, by reason of absence, physical disability or other cause, the superintendent of securities shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to the superintendent of securities any or all of the functions assigned to the commissioner in the Act.

**23.6(3)** The superintendent of securities shall employ officers, attorneys, accountants, investigators, and other employees as shall be needed for the administration of the Act.

**23.6(4)** Upon request the commissioner may honor requests from interested persons for interpretative opinions.

**191—23.7(321I) Public information and inspection of records.** 191—Chapter 1, “Organization and Procedures,” shall govern the practice and procedure for the inspection of division records.

**191—23.8(321I) Public access to hearings.** Every hearing in an administrative proceeding shall be open to the public.

**191—23.9** Reserved.

**191—23.10(321I) Filing procedures.**

**23.10(1) Prepaid envelope.** All filings submitted to the Iowa division of insurance must be accompanied by a prepaid self-addressed envelope large enough to contain all copies of any date-stamped material requested to be returned.

**23.10(2) Annual filing.**

a. In addition to any other required filings, an annual filing shall be made no later than the first day of August. If the first day of August falls on a weekend or a holiday, the date for filing shall be the next business day.

b. The annual filing shall be accompanied by a filing fee of \$100. If the annual filing is not filed or postmarked by the first day of August, the filing shall be accompanied by a late filing fee of \$25. If the annual filing is not filed or postmarked by the first day of September, the filing shall be accompanied by a late filing fee of \$50.

c. If required by the Iowa securities bureau, the annual filing shall include any forms prescribed by that bureau.

**191—23.11(321I) Service of process.** The commissioner shall be the agent for service of process upon any provider of motor vehicle service contracts and the providers of the reimbursement policies.

**191—23.12(321I) Fees.** The following fees are hereby established by the commissioner:

Annual filing fee	\$100.00
Certification	\$ 5.00
Name change	\$ 10.00
Photocopies of records (per page)	\$ 0.50
Printout of providers	\$ 10.00
Printout of insurance companies	\$ 10.00
Late fee (if filed or postmarked after August 1)	\$ 25.00
Late fee (if filed or postmarked after September 1)	\$ 50.00

**191—23.13(321I) Forms.** Copies of all necessary forms and instructions may be obtained from the Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319. Members of the public shall use the form described below when dealing with the bureau. Each direction shall be complied with and each question in the form shall be answered in the same manner as if the form and instructions were embodied in these rules.

The form listed below is available upon request. An application packet, containing one copy each of the Act, this chapter and the report form shall also be available upon request.

FORM NUMBER	DESCRIPTION
MV-1	Notice of Annual Filing. Used by providers when filing the annual filing.

**191—23.14 to 23.19** Reserved.

**191—23.20(321I) Filing requirements.** A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless true and correct copies of the service contract and the provider's reimbursement insurance policy have been filed with the Iowa securities bureau.

**191—23.21(321I) Misrepresentations of government approval.** It is unlawful for any motor vehicle service contract provider to represent or imply in any manner that the provider has been sponsored, recommended, or approved or that the provider's abilities or qualifications have in any respect been passed upon by the Iowa securities bureau, the Iowa insurance division or the state of Iowa.

**191—23.22(321I) Prohibited acts—unfair or deceptive trade practices.**

**23.22(1) *Misrepresentations, false advertising and unfair practices.***

a. Unless licensed as an insurance company, a motor vehicle service contract provider may not use in its name, contracts, or literature, any of the words “insurance,” “casualty,” “surety,” “mutual,” or any other words descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other motor vehicle service contract provider.

b. A motor vehicle service contract provider may not, without the written consent of the purchaser, knowingly charge a purchaser for duplication of coverage or duties required by state or federal law, a warranty expressly issued by a manufacturer or seller of a product or any implied warranty enforceable against the lessor, seller or manufacturer of a product.

c. A motor vehicle service contract provider may not make, permit or cause any false or misleading statements, either oral or written, in connection with the sale, offer to sell or advertisement of a motor vehicle service contract.

d. A motor vehicle service contract provider may not permit or cause the omission of any material statement in connection with the sale, offer to sell or advertisement of a motor vehicle service contract, which under the circumstances should have been made in order to make the statements that were made not misleading.

e. A motor vehicle service contract provider may not make, permit or cause any false or misleading statements, either oral or written, about the benefits or services available under the motor vehicle service contract.

f. A motor vehicle service contract provider may not make, permit or cause any statement or practice which has the effect of creating or maintaining a fraud.

g. A motor vehicle service contract provider is hereby prohibited from making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the motor vehicle service contract industry or with respect to any motor vehicle service contract provider which is untrue, deceptive or misleading.

h. A bank, savings and loan association, insurance company or other lending institution shall not require the purchase of a motor vehicle service contract as a condition of a loan.

**23.22(2) *Defamation.*** A motor vehicle service contract provider is prohibited from making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

**23.22(3) *Boycott, coercion, and intimidation.*** A motor vehicle service contract provider is prohibited from entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the service contract industry.

**23.22(4) *False statements.*** A motor vehicle service contract provider is hereby prohibited from knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

**23.22(5) *False entries.*** A motor vehicle service contract provider is hereby prohibited from knowingly making any false entry of a material fact in any book, report, or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

**23.22(6) *Unfair discrimination or practices.*** A motor vehicle service contract provider is hereby prohibited from making or permitting any unfair discrimination between individuals of the same class

in the rates charged for any contract or in the benefits received thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

**191—23.23(321I) Disclosures.**

**23.23(1) *Disclosure to the provider.*** A motor vehicle service contract reimbursement insurance policy shall not be issued, sold, or offered for sale in this state unless the reimbursement insurance policy conspicuously states that the issuer of the policy shall pay on behalf of the provider all sums which the provider is legally obligated to pay for failure to perform according to the provider's contractual obligations under the motor vehicle service contracts issued or sold by the provider.

**23.23(2) *Disclosure to the service contract holders.*** Every motor vehicle service contract shall be written in clear, understandable language and shall be printed or typed in easy-to-read type, size and style, and shall not be issued, sold, or offered for sale in this state unless the contract:

- a. Conspicuously states that the obligations of the provider to the service contract holder are guaranteed under a service contract reimbursement policy;
- b. Conspicuously states the name and address of the issuer of the reimbursement policy;
- c. Identifies the provider, the seller, and the service contract holder;
- d. Sets forth the total purchase price and the terms under which it is to be paid;
- e. Sets forth the procedure for making a claim, including a telephone number;
- f. Conspicuously states the existence of a deductible amount, if any;
- g. Specifies the merchandise or services, or both, to be provided and any limitations, exceptions or exclusions;
- h. Sets forth the conditions on which substitution will be allowed;
- i. Sets forth all of the obligations and duties of the service contract holder (such as the duty to protect against any further damage to the vehicle, the obligation to notify the provider in advance of any repair, etc.), if any;
- j. Sets forth any terms, restrictions or conditions governing transferability of the service contract, if any;
- k. Sets forth any terms, restrictions, conditions or prohibitions governing refunds;
- l. Describes or references any applicable provisions of the Iowa Consumer Credit Code, Iowa Code chapter 537; and
- m. States the name and address of the commissioner.

**191—23.24(321I) Records.**

**23.24(1)** All motor vehicle service contract providers shall keep accurate accounts, books, and records concerning transactions regulated under the Act.

**23.24(2)** A motor vehicle service contract provider's accounts, books, and records shall include:

- a. Copies of all service contracts;
- b. The name and address of each service contract holder;
- c. The dates, amounts and descriptions of all receipts, claims and expenditures.

**23.24(3)** A motor vehicle service contract provider shall retain all required accounts, books, and records pertaining to each service contract holder for at least two years after the specified period of coverage has expired. A provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to contract holders in this state.

**23.24(4)** Motor vehicle service contract providers shall make all accounts, books, and records concerning transactions regulated under the Act available to the commissioner for the purpose of examination.

**191—23.25(321I) Cancellation of a reimbursement insurance policy.** The issuer of a reimbursement insurance policy shall not cancel a reimbursement insurance policy unless or until a ten-day notice in writing has been received by the Iowa division of insurance and by each applicable provider, including automobile dealers and third-party administrators, which notice shall fix the date of can-

cellation. The notice may be made in person or by mail and a post office department receipt of certified or registered mailing shall be deemed proof of receipt of the notice.

**191—23.26 to 23.29** Reserved.

**191—23.30(321I) Violations.** All violations of these rules shall be considered violations of Iowa Code chapter 321I and, therefore, subject to the provisions of Iowa Code section 321I.6.

**191—23.31(321I) Procedure for public complaints.**

**23.31(1)** The commissioner may receive and process each complaint made against any motor vehicle service contract provider which alleges certain acts or practices which may constitute one or more violations of the Act or this chapter. Any member of the public or any federal, state, or local officials may make and file a complaint with the commissioner. Complaints may be received from sources outside the state of Iowa and processed in the same manner as those originating in Iowa.

**23.31(2)** Complaints may be mailed or delivered to the following address: Iowa Insurance Division, Lucas State Office Building, Des Moines, Iowa 50319.

**23.31(3)** All complaints shall be made in writing and shall fully identify the complainant by name and address. If required by the Iowa securities bureau, complaints shall be made on forms prescribed and provided by that bureau.

**23.31(4)** Oral or telephone communications may not be considered or processed as complaints. However, any member of the administrative staff of the division may make and file a complaint based upon information and belief, in reliance upon oral, telephone, or written communications received by the division.

**191—23.32(321I) Investigations and subpoenas.** The commissioner may:

**23.32(1)** Make private and public investigations within or outside of this state as the commissioner deems necessary to determine whether a person has violated any provision of the Act or any rule or order or to aid the enforcement of the Act;

**23.32(2)** Require or permit any person to file a statement under oath or otherwise as the commissioner determines as to all the facts and circumstances concerning the matter to be investigated; and

**23.32(3)** Publish information concerning any violation of the Act or any rule or order.

**191—23.33(321I) Audits.** The commissioner shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a motor vehicle service contract provider for the purpose of verifying compliance with the Act and this chapter. When a provider fails or refuses to produce the records for examination when requested by the commissioner, the commissioner shall have the authority to require, by a subpoena, the attendance of the provider, or its representatives, and any other witness(es) whom the commissioner deems necessary or expedient to examine and compel the provider and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to compliance with the Act or this chapter.

**191—23.34(321I) Orders.**

**23.34(1)** The commissioner may, by order, take actions which are necessary or appropriate for the protection of purchasers and to implement the purposes of the Act.

**23.34(2)** 191—Chapter 3, “Administrative Hearings of Contested Cases,” shall govern the practice, procedure and conduct of informal proceedings, contested case proceedings, and reviews.

These rules are intended to implement Iowa Code sections 321I.3 and 321I.7.

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